

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5667 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

RAMDE KHIMA MER

Versus

STATE OF GUJARAT

Appearance:

MS JC BHATT FOR KRISHNA U MISHRA for Petitioner
MR.NEEGAM SHUKLA,AGP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 26.4.1996 passed by the District Magistrate, Jamnagar detaining the petitioner under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 28.4.1996 and since the petitioner is under detention lodged at District Jail, Surat.

The present Special Civil Application was filed in this Court on 31.7.1996 and on 2.8.1996 Rule returnable for 26.8.1996 was issued. So far neither any reply has been filed nor any affidavit of the Detaining Authority has been filed.

The grounds enclosed with the detention order show that there are four criminal cases registered against the petitioner under Bombay Prohibition Act at Police Station, Kalyanpur. One case is pending for trial in the court and in three matters police investigation was going on at the time when the detention order has been passed. After noticing the allegations of four criminal cases the Detaining Authority has mentioned that the petitioner was engaged in manufacture/stock and sale of unauthorised country liquor and was engaged in antisocial activities and he had become a problem for the public order. The Detaining Authority has recorded that the petitioner is a headstrong person and was a bootlegger. The statements of four witnesses recorded on 14.4.1996 and 16.4.1996 about the petitioner's antisocial criminal activities were also taken into consideration and it has been noticed that the petitioner has been beating innocent people for using weapons and creating an atmosphere of fear and terror and had become a problem for the public order. The Detaining Authority has opined that the petitioner is a bootlegger and in order to prevent him from continuing his antisocial activities the detention order has been passed.

The detention order has been challenged on more than one grounds but stress was laid on the point that the allegations and the materials on the basis of which the detention order has been passed against the petitioner do not make out any case of breach of public order and at the most it can be said to be a case of the breach of law and order. Strong reliance has been placed on the Supreme Court decision in the case of M.J. Shaikh Vs. M.M. Mehta, reported in 1995(2) GLR Pg.1268.

I find that the contention of the learned counsel for the petitioner is fully covered by Mustakimiya's case (Supra). The detention order cannot be said to be based on the grounds germane to the breach of the public order. It is at the most a case of the breach of law and order only. Accordingly, the detention order cannot be sustained in the eye of law.

Accordingly, this Special Civil Application is allowed. The impugned detention order dated 26.4.1996 passed by District Magistrate, Jamnagar is hereby quashed.

and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.
